

Remarks

Applicant submits this Preliminary Amendment with a Request for Continued Examination. In the event the enclosed check does not cover the RCE, Applicant authorizes the Examiner to charge account number 19-4516 for any deficiencies.

The Examiner rejected claims 1-4, 7, 18-20 and 27 as being unpatentable under 35 USC §103 over U.S. Patent 1,724,349 ("Haag") in view of U.S. Patent 6,691,432 ("Masseron"). The Examiner also rejected claims 1, 7, 18 and 27-28 as being unpatentable under 35 USC §103 over Schaff in view of Masseron. Based on the following remarks, Applicant submits Masseron is not prior art and may not be combined with Haag in a rejection under 35 USC §103. Without Masseron, Haag does not teach or suggest all elements of Applicant's claimed invention and, therefore, all claims should be allowed.

Masseron has a filing date of January 11, 2002. In reference to the attached affidavit under 37 CFR 131, Applicant's date of invention goes back at least until December 12, 2001, as shown in the exhibits to the affidavit. Based on the foregoing, Applicant submits Masseron's filing date is after Applicant's date of invention and, therefore, Masseron is not prior art.

Masseron is relied upon in the office action to show a heel region having an outer surface adapted to be in contact with a walking surface and an opening extending to this outer surface. Because Masseron is not prior art, neither Haag or Schaff shows a heel region having an outer surface adapted to be in contact with a walking surface and an opening extending from an inner surface to this outer surface, as required in Applicant's claims 1-27. Therefore, Applicant submits claims 1-27 are allowable over Haag and Schaff, which are the remaining cited art and which lack an outer surface of a heel adapted to be in contact with a walking surface.

Claims 28 and 29 require a footbed extend over the entire inner surface of the outsole. The office action states figure 4 of Schaff shows a cushion extend to the toe end. However, upon viewing figure 1, one can see cushion H terminates prior to the toe area of the shoe and does not extend over the entire inner surface of the outsole B, where outsole B extends beyond cushion H and to the front most part of the shoe. Because outsole B extends past cushion H, cushion H cannot extend over the entire inner surface of the outsole, as required in Applicant's claims 28 and 29. Therefore, these claims should be allowed.

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Response to Official Action

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'G. Winter', written over a horizontal line.

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